U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29854666

Date: JAN. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability in the reinsurance field. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined the Petitioner fulfilled only one (leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii) of the four claimed criteria. On appeal, the Petitioner maintains he meets three additional evidentiary categories.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends eligibility for this criterion based on his membership with the [redacted]. USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. [1] The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[2]

At the outset, the Petitioner does not claim, nor does the record reflect, his eligibility as an "Associate" member of [redacted].[3] Instead, the Petitioner asserts his "Honorary" membership with [redacted]

[1] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.
[2] *Id.*
[3] We concur with the Director's determination that "Associate" membership with [redacted] does not meet the eligibility requirements for this criterion. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F. 3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F. 3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision as long as they give "individualized consideration" to the case).

qualifies him for this criterion. Associations may have multiple levels of membership.[4] The level of membership afforded to the person must show that in order to obtain that level of membership, recognized national or international experts judged the person as having attained outstanding achievements in the field for which classification is sought.[5]

The Petitioner initially provided a letter from N-G-C-G-, executive director of [redacted], who confirmed the Petitioner's honorary membership "due to his experience, reputation and special merits as one of the leaders in the industry" and "has contributed his knowledge and experience in the development of the reinsurance industry in Colombia." In addition, the Petitioner offered [redacted] bylaws reflecting that "Honorary Associates are those who, by special merits and for the services rendered to the Associates and the Reinsurance activity, are considered worthy of such title by the unanimous decision of the Board of Directors."[6] In response to the Director's request for evidence, the Petitioner submitted a letter from L-E-R-C-, chairman of the board for [redacted], who cited [redacted] bylaws, highlighted the Petitioner's professional achievements, and included [redacted] background and history.

The Petitioner did not demonstrate that honorary membership with [redacted] requires outstanding achievements. The bylaws do not further define "special merits and for the services rendered" or indicate how special merits and services rendered are tantamount to outstanding achievements. Likewise, neither letter provides an explanation or definition of [redacted] interpretation of special merits and services rendered or further elaborates showing that special merits and services rendered are comparable to the regulatory requirement of outstanding achievements. Without further information, the Petitioner did not establish that honorary membership with [redacted] requires outstanding achievements.

Moreover, the Petitioner did not show that recognized national or international experts judge honorary membership for [redacted]. According to [redacted] bylaws, honorary membership requires an "unanimous decision of the Board of Directors."[7] However, the Petitioner did not demonstrate that the board of directors is comprised of recognized national or international experts. In response to the Director's RFE, the Petitioner provided a certificate from N-G-C-G- indicating that [redacted] board of directors includes representatives from various companies, including [redacted]. However, N-G-C-G- did not specifically identify the representatives, indicate whether [redacted] board of directors requires recognized national or international experts, or otherwise show that the board of directors consists of recognized national or international experts. The issue for this criterion is whether the individuals who determine membership are recognized national or international experts rather than the reputation of the companies who employ them. We are not persuaded that every employee who works for a recognized company is also a recognized national or international expert in the field. Although the

[4] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[5] *Id.* (providing that as a possible example, general membership in an international organization for engineering and technology professionals may not meet the requirements of the criterion; however, if that same organization at the fellow level requires, in part, that a nominee have accomplishments that have, for example, contributed importantly to the advancement or application of engineering, science, and technology, and that a council of experts and a committee of current fellows judges the nominations for fellows, that higher, fellow level may be qualifying.)

[6] *See* chapter III, article 20.

[7] *See* chapter III, article 20.

Petitioner submitted screenshots regarding the companies, the Petitioner did not establish that the representatives from the companies who are on [redacted] board of directors are viewed as recognized national or international experts in their fields.

For the reasons discussed above, the Petitioner did not establish he meets this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working in the field.[8] At the outset, the Petitioner submits new evidence on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

At both initial filing and in response to the Director's RFE, the Petitioner asserted:

> An individual working in the Insurance industry in Colombia typically earns around 4,7000,000.00 COP per month. Salaries range from 1,740,000.00 COP (lowest average) to 9,070,00.00 COP (highest) (COP $108,840,000.00 annually). This is the average monthly salary including housing, transport, and other benefits.

The Petitioner provided screenshots from salaryexplorer.com regarding "Insurance Average Salaries in Colombia 2023" reflecting that average monthly salary of 4,700,000 COP. However, the Petitioner did not offer comparable salary information pertaining to the Petitioner's specific occupation. According to the Petitioner's resume and employment documentation, the Petitioner was employed as an "Executive Vice President" with [redacted] from July 2001 – February 2018.[9] Thus, in order to meet this criterion, the Petitioner must show that he received a high salary in relation to other executive vice presidents in the insurance field in Colombia.[10] Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The comparison of the Petitioner's executive vice president salary to the average salary of all

[8] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[9] The Petitioner also submitted evidence of his receipt of profit distributions from [redacted] and a settlement agreement from [redacted].

[10] The screenshots from salaryexplorer.com included the average salaries for a sampling of insurance occupations, none of which reflected a high salary for an executive vice president.

individuals working in the insurance industry in Colombia is not sufficient to satisfy the regulatory requirements of this criterion.[11]

Accordingly, the Petitioner did not demonstrate he fulfills this criterion.

III. CONCLUSION

The Petitioner did not establish he satisfies the criteria relating to memberships and high salary. Although the Petitioner also claims eligibility for the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[12]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing him among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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[11] The Petitioner also did not offer evidence showing that his profit distributions or settlement agreement were significantly high remuneration as an executive vice president in the insurance industry in Colombia.

[12] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.